

CONCHO CATTLE COMPANY,	: Order Affirming Decision
Appellant	:
	:
v.	:
	: Docket No. IBIA 97-42-A
ACTING ANADARKO AREA DIRECTOR,	:
BUREAU OF INDIAN AFFAIRS,	:
Appellee	: July 30, 1997

This is an appeal from an October 8, 1996, decision of the Acting Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), requiring payment of 1996 rent under Wichita, Caddo, and Delaware Farming and Grazing Lease No. 45247 (Riverside Boarding School), covering approximately 1800 acres. For the reasons discussed below, the Board affirms the Area Director's decision.

The lease was for a term beginning May 1, 1995, and ending December 31, 1999. It provided that, for all years after 1995, annual rental payments in the amount of \$29,034.25 were due on January 1 of each year. When Appellant had not made its rental payment for 1996 by February 27, 1996, the Acting Superintendent, Anadarko Agency, BIA, wrote to Appellant, demanding payment of rent and interest and requiring Appellant to show why the lease should not be cancelled. Appellant did not respond. By letter of March 12, 1996, the Acting Superintendent cancelled the lease. He also stated that the rent for 1996, plus interest, must still be paid.

Appellant appealed the Acting Superintendent's letter to the Area Director insofar as it sought payment of rent for 1996 and interest thereon. Appellant did not appeal the lease cancellation.

Appellant contended before the Area Director that it should not have to pay rent for 1996 because it surrendered the lease on March 12, 1996, and left a wheat crop and fencing improvements on the property, the value of which exceeded the amount of the annual rent. Further, Appellant contended that BIA and/or the Tribes were required to mitigate Appellant's damages by re-leasing the property.

The Area Director considered and rejected all of Appellant's arguments, in each case explaining the reasons for rejection.

Appellant's notice of appeal from the Area Director's decision states in its entirety:

This letter is to notify you that [Appellant] hereby appeals the decision of the [Area Director] upholding the [S]uperintendent's decision requiring the payment of the 1996 rent in the

amount of \$29,034.25 plus interest which appears to be dated October 8, 1996, a copy of which is attached hereto as exhibit "A".

The basis for our appeal is contained in our statement of reasons dated May 2, 1996 which is attached hereto as exhibit "B".

Thank you for your consideration.

Appellant's Exhibit B is a copy of the Statement of Reasons it filed with the Area Director when its appeal was pending before him.

In the Notice of Docketing for this appeal, Appellant was advised of its right to file briefs and further advised that it bore the burden of proving error in the Area Director's decision. Appellant did not file a brief.

As noted above, all of the arguments Appellant raised before the Area Director were addressed in the Area Director's October 8, 1996, decision. By simply refileing the same Statement of Reasons it filed with the Area Director and failing even to allege error in the Area Director's responses to its contentions, let alone support those allegations, Appellant has failed to carry its burden of proof here. E.g., Trevino v. Anadarko Area Director, 28 IBIA 129 (1995); Fort McDermitt Paiute-Shoshone Tribe v. Acting Phoenix Area Director, 27 IBIA 162 (1995), and cases cited therein.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's October 8, 1996, decision is affirmed.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge